IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY FOURTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 17543 of 2002

Between:

1 Hayath Khan S/o Osmana Khan, APSRTC., Falaknuma Depot, Hyderabad, r/o Hyderabad, Hyderabad District
2 Babu rao, E. 78460 S/o late P. Lakshmaiah, Hyderabad District

..... PETITIONERS

AND

1 The Depot Manager, APSRTC, Falaknuma Depot, Hyderabad.
2 Sri A. Raja Gopal S/o and Age not known, Depot Manager, APSRTC, Falaknuma Depot, Hyderabad, presently working in Narayanapet Depot, Mahaboobnagar District
3 The Chief Inspector (Enquiries) APSRTC., 0/o The Divisional Manager, Charminar Division, Koti Terminus, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order or direction more particularly one in the nature of writ of mandamus declaring the appointment of 3rd respondent as enquiry officer is illegal as he is not authorised U/s. 5 ofthe Departmental Inquiries, Enforcement of Attendance of witnesses and production of Documents Act 1993 (under Act-7 of 1993) and proceeding further by the 3rd respondents is violative to the law without jurisdiction and against the principles of Natural justice, consequently direct the 1st respondent to refer the matter to the competent authority in accordance to the Departmental Inquiries, enforcement of Attendance of Witness and production of Documents Act 1993.

Counsel for the Petitioners: MR.S.A.K.MYNUDDIN

Counsel for the Respondents : MR.V.T.M.PRASAD

The Court made the following :

ORDER:

This writ petition is filed seeking a mandamus declaring the appointment of third respondent as enquiry officer as arbitrary and illegal. According to the petitioner the same is contrary to Section 5 of the Andhra Pradesh Departmental Inquiries (Enforcement of Attendance Of Witnesses And Production Of Documents) Act, 1993 (Act No. 7 of 1993) and without jurisdiction apart from violative of the principles of natural justice.

So far as the plea that the appointment of the third respondent is contrary to Section 5 of Departmental Enquiries, Enforcement and Attendance of Witnesses and Production of Documents Act, 1993 (Under Act 7 of 1993) is concerned, learned counsel for the petitioners, fairly conceded, that he does not want to press the same. However, he submits that the appointment of the third respondent as an enquiry officer is vitiated for more than one reason. Firstly, the disciplinary authority himself is complainant in this case and he had appointed his subordinate as an enquiry officer. Therefore, there will be every possibility of some prejudice being caused to the interest of the petitioner, if a subordinate of the complainant is permitted to enquire into the misconduct alleged against the petitioner. In this regard, learned counsel for the petitioner relied upon two judgments viz., *M.L.L. KUMAR v. THE DIVISIONAL MANAGER, A.P.S.R.T.C., CUDDAPAH AND ANOTHER,* and *V. ABUSALL v. COMMANDANT AND OTHERS*. The judgment 1st cited is a case where a subordinate conducted enquiry on the complaint made by his superior who

appeared as a witness in that enquiry, and the Court held that employee who has a right to have fair trial is prejudiced and further held that when the person who gave the complaint and the person who gave evidence before the enquiry officer is an officer immediately superior to him, the enquiry should not have been conducted by the officer who was subordinate to the complainant and particularly when the superior officer is also a witness in the case. Therefore, the principles of natural justice as applicable to domestic proceedings have been held to include within them a right to have a fair trial. Therefore, the enquiry conducted by the subordinate to the complainant was held to be bad.

In the second judgment a Division Bench of Kerala High Court held as under:

> *Following the aforesaid decision of the Supreme Court, we hold that the learned Single Judge was wrong in coming to the conclusion that the writ petitioner could not be permitted to raise the question of real likelihood of bias, as he did not raise the same during the course of the enquiry proceedings. Admittedly, the Inspector, who conducted the enquiry, was the immediate subordinate of the complainant in the case. The real likelihood of bias is writ large on the face of the enquiry. We, therefore, disagree with the view of the learned single judge and hold that the entire enquiry was vitiated. Therefore, Writ Appeal No. 811 of 1993 is allowed and the entire enquiry proceedings, including the penalty, are quashed. This, however, will not preclude the authorities, if they so desire, to have a fresh enquiry conducted in accordance withy law by a competent enquiry officer. While doing so, they will, however, consider whether at this distance of time, a fresh enquiry is to be conducted or not.*

From the above, it is clear that when a superior officer is the complainant and also a witness in an enquiry, appointing a subordinate to such complainant as enquiry officer would result in prejudice to the interest of the delinquent and it may have bias on the fair trial of the delinquent officer. In this case, admittedly, the complainant who lodged the complaint is the disciplinary authority and also a witness and he himself appointed his subordinate as enquiry officer.

Therefore, in view of the decisions referred to above, it is not desirable to permit the third respondent to act as an enquiry officer in the disciplinary proceedings launched against the petitioner. However, this will not preclude the authorities concerned in conducting disciplinary proceedings against the petitioner by appointing an enquiry officer either an officer equivalent to that of the complainant or higher officer, for the purpose.

The writ petition is allowed accordingly. No costs.

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kvsn 24-11-2004

That Rule Nisi has been made absolute as above

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Wednesday the 24th day of November, Two Thousand and Four.

To

1 The Depot Manager, APSRTC, Falaknuma Depot, Hyderabad.

2 Sri A. Raja Gopal S/o and Age not known, Depot Manager, APSRTC, Falaknuma Depot, Hyderabad, presently working in Narayanapet Depot, Mahaboobnagar District

3 The Chief Inspector (Enquiries) APSRTC., 0/o The Divisional Manager, Charminar Division, Koti Terminus, Hyderabad.

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